

JIMMY V. BOWLING

IBLA 75-232

Decided May 5, 1975

Appeal from decision of the Montana State Office, Bureau of Land Management, denying a petition to reinstate oil and gas lease M-16535-H (SD).

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to lack of reasonable diligence.

APPEARANCES: Jimmy V. Bowling, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Jimmy V. Bowling has appealed from the decision of the Montana State Office, Bureau of Land Management (BLM), dated November 19, 1974. The State Office decision denied his petition for reinstatement of his oil and gas lease M-16535-H (SD), which had terminated by operation of law upon his failure to pay the annual rental on or before the due date.

The rental payment was due on October 1, 1974. The rental check was not received in the Montana State Office until October 7, 1974. The envelope in which it was mailed from North Carolina is post-marked October 4, 1974.

In his petition for reinstatement of his lease, appellant asserted his only justification for the late payment is that, "because of my job, it is impossible to check my post office box daily. The date I received notice of payment due, I immediately sent you a check."

On appeal appellant contends: "I know of no business or corporation that will 'foreclose' on property or service because payment is 4 days delinquent * * *." He stated that mortgage bankers, installment loan departments, the Internal Revenue Service, and utility companies make a small charge for late payment and in the case of insurance companies there is a grace period. He also asserts that he cannot understand why there is so much concern over a 4-day delinquency.

Under the applicable regulations of the Department of the Interior a document, including payment of rentals, is considered filed when it is received in the proper office during business hours. 43 CFR 3000.5-1. The regulations of this Department concerning timely payment of lease rentals, which make the time of receipt the effective date, govern this matter. Frank J. Germano, 18 IBLA 390 (1975). Accordingly, appellant's rental payment received on October 7, 1974, was filed six days late.

[1] When the payment of annual rental for an oil and gas lease is not received on or before the anniversary date, the lease is not terminated by the act, deed, or decision of any federal employee. Rather, the lease terminates automatically by operation of law, as required by the Act of July 29, 1954, 30 U.S.C. § 188(b) (1970). The fact that such termination has occurred is merely noted by the Bureau officer and communicated to the lessee. The Heirs of John W. Firth, 17 IBLA 125 (1974). However, the law permits reinstatement of terminated leases under certain circumstances at the discretion of the Secretary of the Interior. In order to qualify, the lessee must establish to the satisfaction of the Secretary that his failure to pay the rental timely was either justifiable or not due to lack of reasonable diligence on his part. The Act of May 12, 1970, 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c)(2).

The Board has held the reliance on receipt of a courtesy notice does not justify failure to make timely payment of annual rental. William J. McCullough, 18 IBLA 97 (1974); Louis J. Patla, 10 IBLA 127, 128 (1973).

The lease cannot be reinstated on the basis that reasonable diligence was used in making the payment. Regulation 43 CFR 3108.2-1(c)(2) provides that reasonable diligence normally requires that annual rental payments be sent sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of mail. Schubert Byers, 17 IBLA 255 (1974); Louis Samuel, 8 IBLA 268 (1972). Therefore, appellant's mailing the rental four days after the due date does not constitute reasonable diligence. Gordon R. Epperson, 16 IBLA 60 (1974).

The lessee has the responsibility to maintain his lease in good standing. Failure to do so may not be excused on the grounds of forgetfulness, simple inadvertence, or ignorance of the law or regulations, as they are matters within the control of the lessee. Louis Samuel, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

